

*** THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN**
AND
THE HON'BLE SRI JUSTICE S.V.BHATT

+ WRIT PETITION No.25434 OF 2017

% 29.11.2018

Shamshad Begum

...Petitioner

vs.

\$ The State of A.P., rep. by its Principal Secretary,
Home Department, A.P.Secretariat at Velagapudi,
Amaravathi, Guntur District, A.P., and others.

... Respondents

!Counsel for the Petitioner : Sri D.Suresh Kumar

^Counsel for the Respondents 1 to 5 : Sri P.Krishna Prakash, learned GP
attached to the Office of the learned Advocate
General

Counsel for the respondent No.6 : Sri K.Surender, learned
standing counsel for CBI

<Gist :

>Head Note :

? Cases referred

1. (1974) 1 SCC 374
2. (1969) 1 SCC 167
3. (1994) 6 SCC 731
4. (1997) 6 SCC 339

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ORDER: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

Ayesha Meera, the daughter of the petitioners, who are teachers by profession, was found dead on 27.12.2007. The victim was also noted to have been subjected to rape. That incident led to investigation and consequential prosecution of one Pidathala Satyam Babu. He was tried and found guilty for offences punishable under Sections 302 and 376 IPC and was convicted and sentenced to undergo different counts of imprisonment, including imprisonment for life, and was also ordered to pay fine, and to undergo default sentence on non-payment of fine, in Sessions Case No.34 of 2009 on the file of the Sessions Judge, Mahila Court, Vijayawada, Krishna District.

2. Criminal Appeal No.1518 of 2010 filed by the aforementioned convict was allowed by this Court through Judgment, dated 31.03.2017. Apart from acquitting the accused, the Division Bench also made various observations touching the investigation and prosecution and, essentially, held that it was a case for re-investigation though the learned Judges; quite rightly; noted that their Lordships would not be within jurisdiction to order re-investigation while exercising appellate jurisdiction under Section 374(2) of the Code of Criminal Procedure. The Division Bench stated in that Judgment that it feels that the truth, buried fathom deep under the debris of faulty investigation and distortions, needs to be extricated and real culprits are identified and punished. It left it to

the public spirited citizens to carry the issue forward by availing appropriate legal remedies in that regard.

3. W.P (PIL) No.186 of 2017 was instituted as a Public Interest Litigation touching the matter. It stood tagged along with this writ petition filed by the victim's parents. Obviously to avert multiplicity, the PIL was disposed of without any orders being issued at the instance of the petitioner therein and this writ petition, namely, W.P.No.25434 of 2017 instituted by the parents of the victim, was taken up for consideration.

4. We have heard learned counsel for the petitioners Adv. D.Suresh Kumar, Adv. P.Krishna Prakash, the learned Government Pleader attached to the Office of the learned Advocate General representing respondents 1 to 5 and Adv. K.Surender, the learned standing counsel for the 6th respondent, CBI.

5. The petitioners, who are mother and father of the victim, have filed this writ petition seeking directions to the official respondents to ensure re-investigation into the episode, which resulted in the death of Ayesha Meera, particularly in the backdrop of the findings rendered by this Court through the Judgment in Criminal Appeal No.1518 of 2010 and also to have such re-investigation or investigation *de novo* into the alleged murder of Ayesha Meera being carried through a Special Investigation Team (SIT) consisting of Police Officials with known track record of integrity, by periodically monitoring such investigation by this Court, or to have such investigation referred to the Central Bureau of Investigation (CBI), as may be found appropriate.

6. To our query on the issue of victim compensation, the learned counsel for the petitioners submits that though there was an offer to pay compensation to the petitioners, they have humbly declined it in their pursuit to seek justice for their daughter and to secure her honour; and that, such motivation drives them to continue their pursuit in that regard.

7. Different orders were issued by this Court from time to time during the course of this writ petition. We have read the orders, dated 20.04.2018, 13.07.2018 and 12.10.2018, which were primarily aimed at securing due and proper investigation through the State Police by constituting an SIT.

8. However, as the proceedings progressed through the SIT, it was noticed that though Criminal Appeal No.1518 of 2010 against the order of conviction and sentence handed down by the Court of Sessions in Sessions Case No.34 of 2009, on 29.09.2010, was pending and was decided by this Court only on 31.03.2017, good number of items among the material objects relating to that Criminal Case were destroyed from the trial Court on 07.10.2014. This Court was not only astonished by that strange situation, but was also alerted on the possibility of attempts having been made in the trial Court, even during the pendency of the Criminal appeal against the conviction, to destroy evidence; and that concerted efforts would have been carried to have the records destroyed at the trial Court's end. Hence, a detailed enquiry and report was called for through the Registrar General of this Court; on all aspects of the matter, including the transit and receipt of the lower Court records, item wise, to and fro, the trial Court and the High Court as well as with requisite inputs from the Committal Court, which is the Court of the

Additional Chief Metropolitan Magistrate, Vijayawada. Specific efforts were directed to be taken by the Registry to fix responsibility on those, who would have been responsible, if what was stated before this Court by then, had happened.

9. It is shocking to the judicial conscience - not only of a superior Criminal Court but also of the Supervisory Court under Article 227 of the Constitution of India, that the records of the Criminal Case could be adversely dealt with and even destroyed during the pendency of the Criminal Appeal. What would have happened had the appellate Court made an effort to see those material objects? What if the appellate Court, with all its powers under the Code of Criminal Procedure, was inclined to have further evidence taken on record even by examining the witnesses or material objects, which were available in the custody of the trial Court? What if the appellate Court wanted further scientific examination of the material objects? Such questions assume greater importance particularly because certain DNA test results were also used as part of evidence by the trial Court.

10. The Registrar General's report, which is available with us, only adds fuel to the fire of suspicion already ignited. The report unequivocally points accusing fingers on those who had control and management of the trial Court records, having caused due dispensation of the disappearance of those Court records.

11. Courts of justice are, constitutionally, established throughout the land under several statutes, for administration of justice. The whole set up of a court is for the purpose of administration of justice. The courts of justice in a State, from the highest to the lowest, are by

their constitution, entrusted with functions directly connected with the administration of justice. Courts of justice have, in accordance with their Constitution, to perform multifarious functions for due administration of justice. Laying down the law or doing justice between the parties is of the soul of the duties of the court though administration of justice is a term of wider import than mere adjudication of causes from the seat of justice. The Presiding Judge of a Court embodies in himself the Court, and when engaged in the task of administering justice, is assisted by a complement of clerks and ministerial officers whose duty it is, to protect and maintain the records, prepare the writs, serve the processes. Originally the term 'Court' meant, among other meanings, the Sovereign's place; it has acquired the meaning of the place where justice is administered and further, has come to mean the persons who exercise judicial functions under authority derived either immediately or mediately from the Sovereign. A 'Court' is an agency created by the Sovereign for the purpose of administering justice. It is a place where justice is judicially administered. It is a legal entity. It is a Tribunal presided over by one or more Judges, on whom conferred certain judicial powers for administering justice in accordance with law. When a Judge takes his seat in court, the court is said to have assembled for administering justice. The authority to create courts is an attribute of Sovereignty. When complete in its organized aspect with all the constituent elements of time, place and officers, a 'Court' is constituted in the general legal acceptance of the term. In a democracy governed by rule of law, under a written constitution, judiciary is the *sentinel on the qui vive* to protect the fundamental rights and poised to keep even scales of justice between the citizens and the States or the States inter se. Rule of law and judicial review

are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. The Constitution of India has delineated distribution of sovereign power between the legislature, executive and judiciary. As members of the judiciary, the Judges exercise the sovereign judicial power of the State. They are holders of public offices; which are offices of public trust and in a democracy, such as ours, the Executive, the Legislature and the Judiciary constitute the three pillars of the State. Judges, at whatever level they may be, represent the State and its authority. See for support **Baradakanta Mishra vs. Registrar of Orissa High Court**¹, **Rama Rao vs. Narayan**², **Supreme Court Legal Aid Committee vs. Union of India**³ and **High Court of Judicature at Bombay vs. Shirishkumar Rangrao Patil**⁴.

12. Judicial Officers and staff of the Court are not merely Government servants. They assist in the authority, power and duties of Sovereign's discharge of judicial functions through the judicial institutions of the Sovereign, namely, the Courts. Therefore, the quality of care, caution, integrity and reliability expected from persons who man the Courts are of such nature that any failure in that regard needs to be addressed with all seriousness that it warrants. The custody of the Court records and material objects in Courts are matters governed by Rules. It appears that the High Court has taken up the issue on administrative side. But, if such materials were in the custody of the trial Court and they disappeared in the haste in which it has happened, it sends extremely alarming signals and also raises strong and explicit suspicion on different angles of

¹ (1974) 1 SCC 374

² (1969) 1 SCC 167

³ (1994) 6 SCC 731

⁴ (1997) 6 SCC 339

matters relating to maintenance of Court records and material objects. The situation also generates formidable and grave suspicion of unauthorised interference with the judicial administration in criminal jurisdiction. The possibility of the staff or supervisory officers of the Court being involved in causing disappearance of evidence cannot be ruled out. Destruction of original records and material objects including one part of the evidence in a criminal case ought to happen during the pendency of the Criminal Appeal from that criminal case because, adjudication is a continuing process in appellate jurisdiction and the matter would be *sub judice*. It is not within the jurisdiction of the subordinate Criminal Court to have destroyed the evidence. Going by the pleadings and material papers as well as the Judgments of the trial Court and this Court in Criminal appeal in proceedings where Pidathala Satyam Babu stood accused, convicted and later on acquitted; this is not one of those cases where one could plead that destruction of records had happened accidentally. The death of Ayesha Meera and the criminal case on that account had gathered abundant storm of public attention and carried with it due sensitivity and was also sensational. None would assume that the staff of the trial Court would have been oblivious of the identity of that sensational and sensitive criminal case. Even otherwise, there could be no excuse from the inescapable liability in law for the watchdogs of the judicial systems and the ordained masters therein. What if some person or persons among those involved in the activities of the trial Court were themselves conniving at least in causing disappearance of evidence? If that had happened, it is a pointer to the death knell for the people's confidence in the justice delivery system. Therefore, such activity is a matter, which needs to be enquired and investigated and appropriately dealt

with in criminal jurisdiction itself, if it discloses culpable acts or omissions which are punishable in law. Be it the staff of the Court concerned or the Judicial Officers, who had control of that office, culpability is not something, from which anyone could escape. Howsoever high one may be, the Law always flies higher above all such entities. This is the majesty of Rule of Law reverberating through the Constitution of India and the Laws of this land. This is a fundamental gospel, on which the purity of such processes will have to be founded, nurtured and sustained.

13. We have looked into the entire list of materials, which are stated to have been destroyed by the trial Court, as part of judiciary. It is not within our domain now to guide or control the investigation or to turn ourselves into investigators. But, one thing is certain; due investigation into the occurrence, in which Ayesha Meera was found dead, ought to be carried forward to the logical end through able investigators since investigations are not expected to reach its end point and get stranded though cross-roads do come in the course of different investigations. Having regard to the quality of findings and observations made by a Division Bench of this Court through its Judgment in Criminal Appeal No.1518 of 2010, we need to clarify that those matters and findings even touching the evidence on record, are essentially to the effect that such materials do not lead to establishing the culpability of Pidathala Satyam Babu, who was convicted by the Court of Sessions in the earlier round. Any observation regarding the quality of evidence, the inferences, possibilities, presumptions, chain of events, the qualitative connectivity of the different links etc., in relation to that criminal case, are entirely matters as between Pidathala Satyam Babu and the

State; and, may be the 'victims' as defined as part of the statute laws by now. It cannot affect any investigation which may be taken afresh or re-investigation into the unnatural death of Ayesha Meera.

14. The SIT constituted by the State appears to have carried forward the work entrusted to it through the earlier orders. It had made efforts to reach at requisite materials. This is how even this Court came to know that some of the material objects including the evidence was destroyed in the custody of the trial Court even during the pendency of the Criminal Appeal. While, we may not find much reason to doubt the ability of the SIT to proceed with the matter, we see from the Judgment in Criminal Appeal No.1518 of 2010 that criticism was levied against the investigating officers, which may tantamount to issues for administrative management of the State Police. In **Pooja Pal vs. Union of India** (Criminal Appeal No.77 of 2016), quoting the observations of Lord Denning from 'The Due Process of Law', it was noted, *inter alia*, that in safeguarding our freedoms, the society needs for its defence, a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice. Referring to Criminal Investigation – Basic Perspectives by Paul B.Weston & Renneth M.Wells, the avowed purpose of a criminal investigation and its efficacious prospects were pointed out, *inter alia*, to the effect that successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness and probity in reporting the results of an investigation. All such aspects taken together, we are of the view that in the best interest of the due course of justice and to

instill confidence in the investigation into various aspects of this case, including the disappearance of evidence, it is necessary that the re-investigation of the case relatable to the unnatural death of Ayesha Meera is conducted and to have it carried out by an agency independent of the State Government.

15. The investigation which such agency would carry forward shall include investigation as to disappearance of evidence from the custody of the Criminal Court in S.C.No.34 of 2009 on the file of the Sessions Judge, Mahila Court, Vijayawada, Krishna District. We may indicate that even if different matters are not covered by the same First Investigation Report and are to be treated as two different cases, the investigation has to continue in accordance with law as regards the death of Ayesha Meera as well as the disappearance of evidence in S.C.No.34 of 2009 from the Court of the Sessions Judge, Mahila Court, Vijayawada, Krishna District.

16. With the aforesaid, we order this writ petition directing the CBI to register First Information Report/s, as may be found necessary, relating to the aforesaid aspects and conduct *de novo* investigation, meaning thereby, fresh investigation into the alleged rape and murder of Ayesha Meera and other offences punishable under various penal statutes. The CBI will also register the requisite FIR/FIRs as regards the destruction of documents in Court custody in S.C.No.34 of 2009 on the file of the Sessions Judge, Mahila Court, Vijayawada, Krishna District. It is clarified that the evidence collected by the investigating agency leading to the final report that generated the prosecution in S.C.No.34 of 2009 on the file of the Sessions Judge, Mahila Court, Vijayawada, Krishna District, and Criminal Appeal No.1518 of 2010, will also be considered by CBI in their own

merit to decide whether such materials have also to be utilized by CBI for the purpose of the investigation, as it may deem fit and appropriate, having regard to the totality of materials and factors emanating out of investigation. The SIT shall hand over the entire materials to the Officer of the CBI on receipt of due notice from the CBI. It is also clarified that if the CBI needs the records available from this Court, they can be obtained from the Registrar General of this Court on due requisition. The writ petition is ordered accordingly. There shall be no orders as to costs.

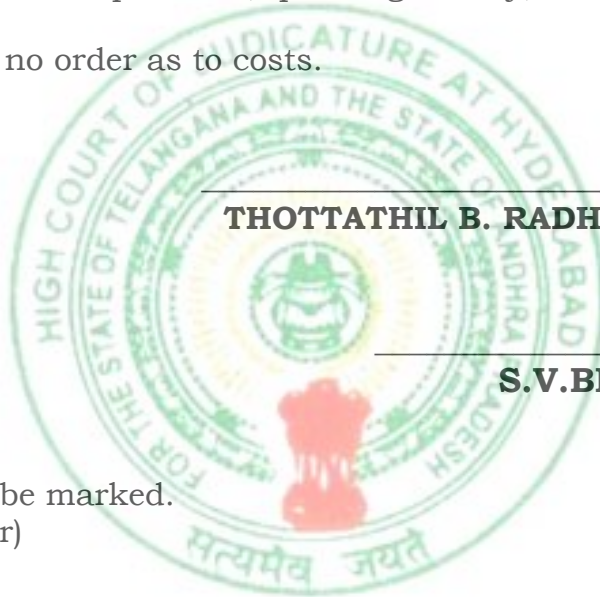
Miscellaneous petitions, pending if any, shall stand closed.
There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

29.11.2018

Note: LR copy be marked.
(By order)
Pln



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